

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-467-C - ORDER NO. 2000-0275
MARCH 20, 2000

IN RE: Application of Alternative Phone,)	ORDER GRANTING
Incorporated for a Certificate of Public)	CERTIFICATE AND
Convenience and Necessity to Provide Local)	APPROVING FLEXIBLE
Exchange Telecommunications Services, and)	REGULATORY
for Flexible Regulatory Treatment)	TREATMENT

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Alternative Phone, Inc. ("API" or the "Company") for authority to provide local exchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local exchange service offerings in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. The Application was filed pursuant to S.C. Code Ann. Sections 58-9-280 and 58-9-520 (Supp. 1999) and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed API to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. API complied with this instruction and provided the Commission with proof of publication of the

Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”).

Counsel for SCTC filed with the Commission a Stipulation in which API stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until API provided written notice of its intent prior to the date of the intended service. API also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. API agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to API provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on March 1, 2000, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Philip T. Bradley, Chairman, presided. API was represented by John J. Pringle, Jr., Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Charles de Menzes, Chief Executive Officer and Chief Financial Officer of API, appeared and testified in support of the Application. API is a privately-held corporation organized under the laws of the State of Florida. According to de Menzes, API seeks authority to provide basic local exchange telecommunications services to customers within South Carolina on a pre-paid basis. More specifically, API will provide certain local exchange services to end-users that are made available for resale by the underlying incumbent local exchange carriers.

Additionally, API seeks approval of the flexible rate structure for its local exchange service offerings similar to that approved by Order No. 1998-165 in Docket No. 1997-467-C. In addition, API requests that the Commission approve waivers of certain Commission regulations and practices for API's operations within South Carolina.

The record reveals API has received certification to provide local exchange telecommunications services in Florida; the Company has applications pending in Alabama and Georgia. In South Carolina, API seeks authority to provide its services throughout the State of South Carolina in areas currently served by BellSouth, GTE, and United Telephone. API and BellSouth have negotiated an interconnection agreement; the Company may negotiate interconnection agreements with GTE South, Inc. and United Telephone of the Carolinas.

De Menzes described API's management team as having, collectively, more than forty-five years of experience in the telecommunications industry. API's management team consists of Mr. de Menzes and Jeff Roderick, President of API. Mr. de Menzes' experience includes designing, developing, implementing, and currently maintaining the Utility Management Network System for Tradewinds Utilities, Residential Water Systems, Inc., BFF Corp., C.F.A.T. H2o, Inc., and M.I.R.A. International, Inc. Prior to joining API, Mr. Roderick was employed with Electronic Data Systems (EDS) as a Senior Systems Engineer. Mr. de Menzes also testified that API has access to adequate capital to support the provision of local exchange service in the State of South Carolina.

Regarding API's technical resources, the record reveals API currently maintains a customer service department in its corporate headquarters in Ocala, Florida. The customer service department employs three full-time customer service representative and is open five days

a week from 9:00 a.m. until 5:00 p.m. Customer inquiries regarding bills can also be answered by the Company's customer service department; API's customer service department telephone number appears on customers' bills. All of API's customers will have access to 911 services provided by the Company. The testimony reveals API will engage in mass advertising to market its services in South Carolina. API will not utilize a direct sales force and authorized API sales agents will be available to customers who wish to acquire local service from the Company. A copy of an agency agreement executed between API and its agents was marked for identification and entered into the evidence as a Hearing Exhibit.

De Menzes testified further that API's services have been well received in Florida. According to de Menzes, the Company's Florida customers enjoy the benefit of being able to make their telephone payments and access customer service at storefronts. Further, API makes its services available to customers who wish to have an exact budget amount for their utility service each month; the Company provides flat-rated basic local exchange services in a manner that is different than that of the ILECs, according to de Menzes.

De Menzes requested that API be granted a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) which requires a company to maintain its books and records within the State of South Carolina. de Menzes stated that API's books and records will be maintained in Ocala, Florida. Further, the Company agrees to make those records available at any time to anyone designated by this Commission and will pay out of pocket expenses related to travel to review those records on behalf of the Commission. De Menzes also requested that API be allowed to keep its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"), rather than under the Uniform System of Accounts ("USOA"); de Menzes testified API maintains its

books and records under the Generally Accepted Accounting Principles. API also seeks a waiver of 26 S.C. Code Ann. Regs. 103-633 (Supp. 1999) which requires a telephone utility to make a reasonable attempt to effect collection and give the customer written notice that he has five days in which to make settlement on his account or have his service disconnected.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. API is organized as a corporation under the laws of the State of Florida and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. API is a provider of local exchange services and wishes to provide its services in South Carolina.
3. The Commission finds, based upon the evidence presented at the hearing, that API has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 1999).
4. The Commission finds that API's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 1999).
5. The Commission finds that API will participate in the support of universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 1999).

6. The Commission finds that API will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by API “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to API to provide competitive intrastate local exchange service in South Carolina. The terms of the Stipulation between API and SCTC are approved and adopted as a part of this Order. Any proposal to provide service to rural service areas is subject to the terms of the Stipulation.

2. API shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. API’s local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for API’s competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, API’s local exchange service tariff filings will be presumed valid upon filing, subject to the Commission’s right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission.

Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. API shall file annual financial information as the Commission requires of competitive local exchange companies. This information includes annual reports and gross receipts reports. As the annual report and the gross receipt report necessitate the filing of intrastate information, API shall keep such financial records on an intrastate basis as needed to comply with these reporting requirements.

4. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

API shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment A shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

5. API shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

6. API requested waivers from certain Commission regulations and requirements. Specifically, API requested waivers from the requirement contained in Rule 103-610 that all records be kept within the State of South Carolina, the requirement that a telephone utility make a reasonable attempt to effect collection and give the customer written notice that the customer has five days in which to make settlement on his account or have his service disconnected, and any requirement to maintain books and records in compliance with the USOA. The Commission grants the request for a waiver from the requirement contained in Rule 103-610 that all records be kept within the State of South Carolina as API has indicated that its principal place of business is located in Ocala, Florida. API has indicated that it will make its records available for inspection upon request by the Commission. Further, the Commission grants API's request that it be allowed to keep its books and records in accordance with GAAP rather than the USOA. The Commission, however, denies API's request that it be exempt from providing a separate five day written notice to a customer to make settlement on his account prior to disconnection. The Commission holds that the notification of disconnection provided in the bill is not sufficient to meet the requirements of 26 S.C. Code Ann. Regs. 103-633 (Supp. 1999); therefore, API is instructed that it must comply with the requirements of 26 S.C. Code Ann. Regs. 103-633 (Supp. 1999) regarding "Procedures For Termination of Service". API is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

7. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity

of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs API to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, API shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION

103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

Company Name (Including dba Name(s) or Acronyms used or to be used in South Carolina)

Business Address

City, State, Zip Code

A.

General Manager Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

B.

Customer Relations (Complaints) Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

C.

Engineering Operations Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

D.

Test and Repair Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

E.

Contact for Emergencies During Non-Office Hours (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

F.

Financial Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

G.

Customer Contact Telephone Number for Company (Toll Free)

This form was completed by

Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)
or Utilities Department at (803-896-5105).**

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 1999-467-C

Re: Application of Alternative Phone, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Local Exchange)
Telecommunications Services in the State)
of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Alternative Phone, Inc. ("Alternative Phone") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Alternative Phone's Application. SCTC and Alternative Phone stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Alternative Phone, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Alternative Phone stipulates and agrees that any Certificate which may be granted will authorize Alternative Phone to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Alternative Phone stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Alternative Phone stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area,

unless and until Alternative Phone provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Alternative Phone acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Alternative Phone stipulates and agrees that if Alternative Phone gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Alternative Phone will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Alternative Phone acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Alternative Phone agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Alternative Phone hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 26th day of January, 2000.

Alternative Phone, Inc.:

John A. Pringle, Jr.

South Carolina Telephone Coalition:

Margaret M. Fox

M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Hargray Telephone Company, Inc.
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

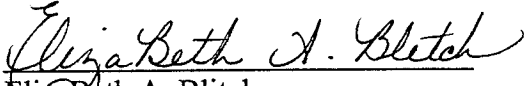
Docket No. 1999-467-C

Re: Application of Alternative Phone, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Local Exchange)
Telecommunications Services in the State)
of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

John F. Beach, Esquire
Beach Law Firm, P.A.
Post Office Box 11547
Columbia, South Carolina 29211-1547.


ElizaBeth A. Blitch
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

February 3, 2000

Columbia, South Carolina